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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/600,022  | 06/19/2003  | Brent C. Gerberding  | S63.2B-10964-US01   | 5691             |
| 490   | 7590        | 11/01/2005           | EXAMINER            |                  |
| VIDAS, ARRETT & STEINKRAUS, P.A.<br>6109 BLUE CIRCLE DRIVE<br>SUITE 2000<br>MINNETONKA, MN 55343-9185 |             |                      | ISABELLA, DAVID J   |                  |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             |                      |                     | 3738             |
| DATE MAILED: 11/01/2005   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                     |
|------------------------------|-------------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b>        | <b>Applicant(s)</b> |
|                              | 10/600,022                    | GERBERDING ET AL.   |
|                              | Examiner<br>DAVID J. ISABELLA | Art Unit<br>3738    |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 August 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 21-31 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 and 32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Claims 1,20 and 32 and claims 21-31 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-4,7,9-13,20,32 are rejected under 35 U.S.C. 102(e) as being anticipated by Edwin et al (20020095205).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwin et al (20020095205) in view of any of Ventura (2004/0044399), Burgermeister et al (20030069630) and Gladdish, Jr. et al (20020193867), and further in view of any of

Lombardi, et al (6203568),(200400115228), Hossainy et al (6635082) or Schaldach et al (20020103528).

Edwin et al discloses a stent comprising a tubular framework having an outer surface and an inner surface and a plurality of interconnected struts, an outer covering of PTFE and an inner covering of PTFE, the outer covering extending along at least a portion of the outer surface of the expandable framework, the inner covering extending along at least a portion of the inner surface of the expandable framework, at least a portion of the inner and outer coverings being contiguous, the stent further comprising at least one radiopaque marker disposed between the inner covering and the outer covering. See illustrations of figures 3-5 and corresponding supporting portions of the specification. While Edwin et al does not disclose the particular embodiment the serpentine bands including a connector strut attaching a peak of one band to a trough of another, such configurations are well known in the prior art and do not form the basis of the invention. Moreover, Edwin does not disclose the particulars of the connector strut having at least one marker, however each of Ventura (2004/0044399), Burgermeister et al (20030069630) and Gladdish, Jr. et al (20020193867) illustrate markers disposed on or in the connector strut. To place markers at the location of the connector strut would have been an obvious equivalence from the teachings of any of Ventura (2004/0044399), Burgermeister et al (20030069630) and Gladdish, Jr. et al (20020193867) based on design and engineering consideration. Moreover, conversely, to provide an inner and outer covering of ePTFE to the serpentine frame of any of Ventura (2004/0044399), Burgermeister et al (20030069630) and Gladdish, Jr. et al

(20020193867) to provide better compatibility and tissue response would have been obvious from the teachings of Edwin et al.

Claims 2,3,4,7,9,10-13,20,32 see figures 3-5 and specification, paragraphs [0021-0027].

The various methods for placing the markers in the stent system is taught by each of Lomabardi, et al, Hossainy, et al and Schaldach et al. 5. The marker (band) may be attached to the framework by crimping, embedding and/or coating a portion of the stent framework. The references teach various placements of the radiopaque marker including near or adjacent an uncovered region of the stent. To apply the marker to the stent via crimping, embedding and/or coating would have been obvious to one with ordinary skill in the art based upon engineering and design considerations.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant's amendment directed to placing the marker on the connector strut in a tubular framework having a serpentine bands necessitated new grounds of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

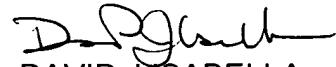
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
10/30/2005